



BACK PAY ORDERED/APPROVED BY COURT OR ADMINISTRATIVE AGENCY



PROCEDURES:

The following procedures have been compiled to guide Human Resource Administrators through the process of calculating back pay. Note that these procedures apply to payments made by an agency pursuant to an award, determination or agreement approved or sanctioned by a court or administrative agency. Due to procedural requirements, these payments must be made as a positive manual adjustment (SAS-27), and not issued through KHRIS. Although the intent has been to be as thorough as possible, each situation is unique. We recommend review of 200 KAR 12:030 for details regarding the calculation of backpay. Should an order be issued that these procedures do not cover, please submit a business request for support through the Personnel Cabinet's Human Resource Administrator Portal (at <https://hr.personnel.ky.gov>). Please click on Services, then System Support, and use the link at the bottom of the page to request support.

Payroll documents in these cases must be accompanied by the complete legal history for the payment. When you forward reinstatement payroll documents, you must include any recommended order, final order, and/or order approving a settlement agreement from the Personnel Board, administrative agency, or court. In addition, you must indicate which order is final. For example, include any denials of discretionary review by the Kentucky Supreme Court. The complete legal history may include the following documents:

1. **Personnel Board Recommended Order**
2. **Personnel Board Final Order**
3. **Mediation Settlement Agreement**
4. **Circuit Court Judgment**
5. **Court of Appeals Opinion**
6. **Kentucky Supreme Court Opinion**

Other typically required documents may include:

1. **Employee Affidavit** (which may require W-2 and Income Tax Return copies as supporting documentation), if there was a period of separation
2. **Back Pay Worksheets**-please submit the board order, wage worksheets and other supporting documentation via [Business Request](#) prior to sending those wages to Kentucky Retirement System or Kentucky Teacher's Retirement. We will review and verify that the amount of the back pay is correct and that it is reported in the correct period so that when the wages are sent to Kentucky Retirement System and Kentucky Teacher's Retirement they will be able to correctly generate an invoice for contributions and interest.
3. **PAN Recap** (A recap of all related PANs)
4. **Positive Manual Adjustment Form (Previous Form SAS-27)** Please note the following wage types often used on positive Manual Adjustment forms paying board orders:
For Manual Adjustment Form Use Only
7500 ER Ret Int fr Bd Ord (Retirement Interest)
7501 Misc PT Ded fr Bd Ord (Post-Tax Deductions)
7502 UI Repay fr Bd Ord (Unemployment Ins. Reimb.)
7503 Health Cost Reimbursement by Employer
5. **Back Pay Under A Statute Report (Form SS-9)** for the Social Security Coverage and Reporting Branch in the Finance and Administration Cabinet, Office of the Controller, Division of Local Government Services.

6. **Statement from the Retirement System** for contributions and interest due

****Note:** Forms and all documentation may be sent electronically. If sensitive information is being transmitted, such as health information and/or Social Security Numbers, the documentation should be transmitted using Entrust Encryption. If an agency does not have Entrust Encryption for email, the forms may be faxed with a cover sheet that includes a confidentiality notice. Please contact your agency's payroll branch consultant to coordinate the faxing of materials.

DEFINITIONS:

Several terms will be used repeatedly in these procedures. They are defined as follows:

1. **Gross Pay:** The total amount of pay which the employee would have earned during the time of the personnel action had such action not been taken.
2. **Set Off Income (also called "off-set" income, but will be referred to as "set off" income, consistent with the language of 200 KAR 12:030):** Income earned by the employee from other employment sources during the time of penalty.
3. **Penalty:** Action taken by the appointing authority against the employee including dismissal, suspension, and demotion and for which the employee successfully appealed to the Court, Personnel Board, or other authoritative administrative agency.
4. **Adjusted Gross:** The gross amount the state owes the employee; derived from the gross pay minus the set off income. This is not the net amount of the payment.

COMPUTING THE BACK PAY:

The gross back pay due an employee for the period of penalty is the monthly pay rate at the time of penalty plus any changes to his classification during the period of penalty plus annual increments and any other changes which would affect the amount of compensation due the employee. In the case of an hourly employee, use the number of hours in each month times the hourly rate, to calculate the monthly pay rate. The Human Resource Administrator itemizes the amount due the employee before set off income is applied. This should be broken down by month.

The gross back pay due is adjusted by the amount of set off income to determine the adjusted gross; the gross pay minus set off income equals the adjusted gross. However, the set off amount is included in the amount of retirement eligible wages.

DEDUCTIONS:

Note: deductions shall follow the priority of deduction sequence outlined in KHRIS. Retirement and required payroll taxes supersede other deductions. For questions regarding the priority of deductions, please submit a business request for support through the Personnel Cabinet's Human Resource Administrator Portal (at <https://hr.personnel.ky.gov>). Please click on Services, then System Support, and use the link at the bottom of the page to request support.

Retirement - Retirement is paid on the total gross pay due employee before set off income is applied, unless during the penalty period, the employee was employed by an agency participating in a state retirement system and the employee paid retirement contributions into the system. In this case, the agency needs to request wage reports from the Kentucky Retirement Office, and the agency pays retirement on the difference only. Interest is paid on both the employee and employer shares of retirement by the Employer. The Retirement Office will calculate the amount of interest due, but the agency must notify them of the amounts due by months from the state. If a dismissed employee has drawn retirement benefits during the period of dismissal, the agency must notify the Retirement Office of this fact.

Social Security (FICA; Medicare) - Applicable Social Security (FICA; Medicare) taxes are paid on the adjusted gross wages less any pretax for FICA deductions. The current year applicable rate must be used for all cumulative years, since the Employee reports all income on a cash basis.

Social Security (FICA; Medicare) reporting requires copies/originals of the following forms to the Social Security Coverage and Reporting Branch:

- **Positive Manual Adjustment Form (Previous Form SAS-27)**
- **Back Pay Under A Statute Report (Form SS-9)** - A breakdown of the annual wages earned.
- The amount of employee retirement contributions for each year beginning with 1987.

Federal Taxes - The total employee retirement deduction, as well as any other federal income tax (FIT) exempt deductions, are subtracted from gross wages before figuring the federal taxes. The method used to figure the federal taxes can be the current federal tax schedule or the flat 25% method, if the employee is subject to withholding.

State Taxes - The total employee retirement deduction, as well as any other state income tax (SIT) exempt deductions, are subtracted from gross wages before figuring the state taxes. The current State Tax schedule or the flat 6% method can be used if the employee is subject to withholding.

Occupational (Local) Taxes - Occupational taxes are withheld on the adjusted gross at the current rates, incorporating any tiering or limits, if the employee is subject to occupational tax withholding. Utilize the current work tax area when calculating occupational tax due.

Unemployment - If the employee was paid unemployment benefits during the period, a deduction must be made from his check and made payable to the Unemployment Fund. It is not treated as set off income. It is subject to all payroll taxation. The amount of unemployment the employee drew should be verified with the local Unemployment Office (564-2387).

Health Insurance – As a general rule, employee health insurance coverage under the Kentucky Employees’ Health Plan (KEHP) should be reinstated on a prospective basis only. “Prospective basis” means that health insurance coverage will be effective as of the effective date of the award, determination, or agreement approved or sanctioned by a court or administrative agency. In no event can health insurance coverage through KEHP be reinstated prior to the current plan year.

In most situations, the agency employer is ordered to “make the employee whole” upon reinstatement of an employee after a period of separation. Below are some guiding principles for how an agency may make the employee whole with respect to health insurance.

1. If an employee did not procure other health insurance or incur any medical expenses during the separation period, the employee will be made whole by reinstating health insurance coverage through KEHP on a prospective basis.
2. If the employee procured other health insurance during the employee’s separation period, the agency must reimburse the employee for any insurance premiums paid (such as premiums paid for COBRA coverage). Health insurance coverage through KEHP will be reinstated on a prospective basis.
3. If the employee did not procure other health insurance but incurred medical expenses that would have been covered under KEHP, the agency must reimburse the employee for any substantiated medical expenses incurred during the separation period. Insurance through KEHP will be reinstated on a prospective basis.

In some instances, a court’s or administrative agency’s order may require specific relief upon reinstatement after an employee’s period of separation. As each situation is unique, agencies are directed to consult with the Department of Employee Insurance regarding health insurance when preparing board order payments.

Life Insurance - Employer contributions for the contracted Basic coverage, additionally any Employee premium contributions for any Optional and/or Dependent coverage amounts to be paid per binding legal agreement. Contact the Life Insurance Branch at (502)564-4774 for the amount due.

OTHER CONSIDERATIONS

Annual and Sick Leave Time - The employee is to have all leave he or she would have earned during the penalty period restored to his or her record. The employee is also entitled to all leave balances he or she was not paid for upon dismissal.

Manual Payroll & Documentation Required – All wages being paid to an employee, both prior year and current year wages, for an order must be done on the same positive manual adjustment form (SAS-27). These wages must be updated to the employee’s record in KHRIS. These wages are updated by the Personnel Cabinet. Copies of the relevant order,

affidavit (if applicable), compilation of wages, and any other supporting documentation must be forwarded with the positive manual adjustment form to the Manual Adjustment Form mailbox. If sensitive information is being transmitted, such as health information and/or Social Security Numbers, the documentation should be transmitted using Entrust Encryption. If an agency does not have Entrust Encryption for email, the forms may be faxed with a cover sheet that includes a confidentiality notice. Please contact your agency's payroll branch consultant to coordinate the faxing of materials.

Checks - Treasury will forward any checks to you that you are responsible for mailing or delivering to the payees. Log all check numbers on your copy of the positive manual adjustment form (SAS-27) for audit tracking purposes. Letters should accompany all checks specifying to whom and for what the check has been issued.

The Payroll Branch will update the payment to KHRIS and produce the W-2. If the employee does not have an active payroll record, a master file will be established to record this information.

BACK PAY UNDER A STATUTE REPORT (Form SS-9):

State agencies must determine if the wages being paid for prior years are considered back pay under a statute. Back pay under a statute is any payment made by an agency pursuant to an award, determination or agreement approved or sanctioned by a court or administrative agency charged with enforcing a federal or state statute protecting an employee's right to employment or wages.

IRS and SSA treat back pay under a statute in different ways. IRS considers back pay under a statute as wages for the year in which the back pay award is paid. Agencies should withhold the applicable taxes and report the back pay on the current year's Form W-2. The Form W-2 should reflect the back pay, in addition to any current year's wages, as wages for the year in which it was paid.

SSA treats back pay under a statute as wages paid in the periods in which they have been earned. SSA will allocate the back pay amounts to the appropriate past years after the original Form W-2 is processed and the back pay information is submitted to SSA.

State agencies must complete Form SS-9 allocating the wages to the calendar year in which they should have been paid and send the form to the **Social Security Coverage and Reporting Branch**. All State Social Security website information may be accessed at:

<http://finance.ky.gov/services/localgov/Pages/SScoverageandreporting.aspx>

If you have any questions concerning what constitutes back pay under a statute or the required procedures, please call the **Social Security Coverage and Reporting Branch at (502) 564-3952**.

SPECIAL NOTES:

1. Any agreement between the employee and the Agency which alters the Court or Board Order currently in effect must be reviewed and signed by the Court or the Board.
2. These procedures were compiled from many sources, including, but not limited to, The Research of America Payroll Guide, Kentucky Revised Statutes (Chapter 18A. 125, 45.231, 61.569) and the Kentucky Administrative Regulations (200 KAR 12:030). They have been reviewed by Personnel Cabinet Legal Counsel, The Department of Employee Insurance, Group Life Insurance, and The Social Security Coverage and Reporting Branch in the Finance and Administration Cabinet.

**COMMONWEALTH OF KENTUCKY
EMPLOYEE'S AFFIDAVIT OF
EMPLOYMENT DURING PERIOD OF SEPARATION**

STATE OF KENTUCKY, COUNTY OF _____

I, _____, being first duly sworn and mindful of the laws and penalties of perjury, state the following:

(1) I was discharged from my position with _____
on _____, and was ordered to return to work on _____.

(2) At the time of my discharge, my salary was \$_____ per month, my pay being \$_____ per hour.

(3) List all employment engaged in during period of separation in complete detail; including employer, period of employment, hourly wages, hours per week; with overtime separately designated. Also include total amount earned during the period of separation with all W-2 Forms or a certified statement from the employer verifying the amount earned (See attached sheet to be completed in detail.)

(4) If self-employed during the period of separation, state on the sheet below the type of employment, period of employment, place and amount earned. Also state whether this self-employment was engaged in prior to the period of separation/dismissal. To verify the requested information, include copies of _____ through _____ State and Federal Tax Returns.

Type of Employment: _____

Period of Self-Employment: _____

Place of Self-Employment: _____

Was the self-employment engaged in prior to the period of separation? _____

NOTE: To verify the requested information on self-employment, include copies of _____ through _____ State and Federal Income Tax Returns.

(5) During the period of my separation, I was unavailable or unable to work at my position with _____ during the following period:

Reason: _____

Date From: _____ Date To: _____

(6) During the period of my separation, I [sought] [did not seek] other employment. (Mark out which is **not** true.)

If your response to question #6 indicates an attempt to secure other employment, enumerate the instances on the form below:

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview? _____

Place employment was sought: _____

Name of firm contacted along with the individual with whom you spoke: _____

Date: _____

Type of employment sought: _____

Was the job offered as a result of your interview?

(7) Form to be filled out by those employed by others during the period of separation:

Employer: _____

Date From: _____

Date To: _____

Rate of Hourly Pay: _____

Hours Per Week Worked: _____

Overtime Worked: _____

Total Amount Earned: _____

Employer: _____

Date From: _____

Date To: _____

Rate of Hourly Pay: _____

Hours Per Week Worked: _____

Overtime Worked: _____

Total Amount Earned: _____

NOTE: Also attach W-2 Forms or a certified statement from your employer(s) covering the period of employment. _____

(8) I [have] [have not] earned other income during the period of my separation, except as stated herein. (Mark out which is **not** true.)

(9) During the period of my separation, I received \$_____ from the Unemployment Compensation Fund, \$_____ from Social Security, and \$_____ from the State Retirement Fund. (Explain in complete detail on an attached sheet.)

The foregoing and attached statements are true to the best of my knowledge. Subscribed and sworn to me by _____, on this the _____ day of _____.

Notary Public

Social Security Coverage and Reporting Branch

Back Pay Under Statute Report

Department Name: _____

Cabinet/Dept #: _____

Employee SSN: _____

Employee Name: _____

Date of Back Pay: _____

Payroll Voucher # - _____

Form SAS-27: _____

Payment Authority: _____

Cite the statute under which the back pay was made.

Year	Taxable Wages
Total	\$ -

Show the calendar year wages should have been paid and the amount to be allocated each year.

Agency Contact Person

Phone Number

Date

Return this form to the Social Security Coverage and Reporting Branch:

Mail: PO Box 639, Frankfort KY 40601-0639 / Fax: (502) 564-2124

E-mail: tammy.taylor@ky.gov

Back Pay Worksheet

NAME _____ SSN _____

PERIOD	SALARY	REMARKS

TOTAL SALARY _____

Gross Amount Due Before Offsets: _____

Set Off Income: _____

Adjusted Gross Due Before Normal Deductions: _____

Employee____% Deduction for Retirement*: _____ State _____

Annual Leave Due While Dismissed*: _____

Sick Leave Due While Dismissed*: _____

Leave Balances When Terminated: _____

VACATION: SICK: COMP:

*If applicable

Date

Group Life Insurance
Personnel Cabinet
501 High Street
3rd Floor
Frankfort, Kentucky 40601

Attention: State Paid Life

Dear Mr. Hughes:

Attached is a check # _____ in the amount of \$_____. (Employee's Name) was dismissed from this Department on (Date) and ordered reinstated by the State Personnel Board (or Court Name) with all back pay effective (Date).

This check represents the state's share of life insurance for the period of dismissal.

If you have any questions, please let me know.

Sincerely,

Human Resource Administrator

Attachment

cc: (Employee)

MEMORANDUM

TO: Unemployment Insurance
2nd Floor East, CHR Building
275 East Main Street
Frankfort, KY 40621

FROM: Human Resource Administrator

SUBJECT: (Employee's Name)

DATE:

The subject employee was discharged from his position on (Date), and was ordered reinstated by the State Personnel Board with all back pay effective (Date).

The attached check #_____ in the amount of \$_____ represents unemployment the employee was paid while off. We have paid him full pay for the entire period of dismissal.

If you have any questions, please let me know.

Attachment

cc: (Employee name)

200 KAR 12:030. Computing compensation due a state employee after adjudicated penalization.

RELATES TO: KRS Chapter 18A

STATUTORY AUTHORITY: KRS 18A.105

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation repeals 200 KAR 12:010, relating to the calculation of compensation due a state employee following the Personnel Board's or a court's adjudication of an appealed personnel action. This administrative regulation also establishes a modified procedure for calculating the foregoing compensation. Furthermore, this administrative regulation repeals 200 KAR 6:035, pertaining to the leasing of real property on behalf of various state agencies. The provisions of that administrative regulation have been codified under KRS 56.830.

Section 1. Definitions. The following terms, words or phrases shall have the meaning assigned herein, unless the context indicates otherwise:

(1) "Adjudicated penalization" shall include, but not be limited to, the demotion, dismissal, suspension, fine or any other personnel action for which, after appeal, an employee is ordered either by the Personnel Board or by a court of competent jurisdiction to be reinstated to his former position or like position without loss of pay.

(2) "Corrective dates or corrective period" are synonymous terms for the period between the date of adjudicated penalization or removal from the payroll and the date of reinstatement to a former position or a position of like status and pay as provided by KRS 18A.095.

(3) "Gross pay" means the gross amount of pay which an employee would have earned during the corrective period.

Section 2. Time of Payment. When the Personnel Board or a court of competent jurisdiction has ordered an employee reinstated to his former position or a like position without loss of pay, the appointing authority shall within a reasonable time thereafter cause the amount of compensation to which such employee is entitled for the corrective period to be calculated as provided in this administrative regulation.

Section 3. Calculation of Gross Pay. (1) Calculation of gross pay shall be limited to the amount of gross salary or wages which would have been earned by the employee during the corrective period. If the employee dies or becomes permanently and totally disabled for the performance of duties of the position to which he is entitled to be reinstated prior to his reinstatement, the date of death or the date of total disability shall be deemed to be the last date to which such employee shall be entitled to be paid. In the case of a permanently and totally disabled employee, the last date may be extended by the number of days of sick or annual leave days accrued and to which he is entitled as provided in Section 7 of this administrative regulation.

(2) Gross pay for a full-time employee shall be based on the following:

(a) The grade, classification and monthly pay rate in effect at the time of the adjudicated penalization, plus;

(b) Changes in classification in employee's position or the pay rate by reason of wage surveys, administrative action or legislation;

(c) Allowable increments for which the employee could have been considered eligible by the appointing authority during the corrective period;

(d) Any other changes which would affect the amount of compensation which the employee would otherwise have received if the adjudicated penalization had not occurred.

(3) Part-time employees shall be entitled to all pay increases applicable to full-time employees as set out in paragraph (2) of this subsection, if such employee would otherwise have been eligible to receive them during the corrective period under the administrative regulations of the Department of Personnel.

(4) Gross pay for a part-time employee shall be determined by one (1) of the following methods:

(a) Averaging the number of hours worked by other employees of the agency in the same locality under the same type of appointment, performing the same kind of work that the employee would have performed during the corrective period;

(b) Averaging the hours per week the employee worked during the calendar year preceding the adjudicated penalization.

(5) An employee demoted in grade, and consequently, ordered reinstated to his former position or to a position of like status and pay pursuant to KRS 18A.095, shall be eligible to be paid the difference in salary that he would have earned at his former pay rate and the salary that he earned at the pay rate to which he was demoted for all the entire period of his demotion.

Section 4. Retirement Calculations. (1) Employer and employee contributions to the Kentucky Employees' Retirement System shall be calculated on the basis of the employee's gross pay. Reductions in the amount due the retirement system shall be made if a portion of these costs were paid during the corrective period, as in the case of a demoted employee.

(2) An employee ordered reinstated by the Personnel Board or a court of competent jurisdiction and who has previously withdrawn his contributions to the retirement system, may elect after reinstatement, to repay the amount withdrawn by deduction from any compensation due him; or, if no compensation is due the employee, then the employee may pay this amount by check. The appointing authority shall in any event pay the employer's share of contributions to the retirement system plus interest at the current legal rate on the employer-employee contributions provided that the employer's share has not previously been paid to the system during the corrective period.

Section 5. Setoff Income. (1) Except as provided in this subsection, the employee's gross earnings from other employment during the corrective period, shall be setoff against his gross pay as determined in Section 3 of this administrative regulation, to the extent that this income was earned in a number of hours not in excess of the hours the employee would have worked prior to the adjudicated penalization. Furthermore, the income earned during the corrective period shall not be setoff against an employee's gross earnings from other employment, if the income was being earned prior to the corrective period.

(2) In order to determine an employee's gross earnings from other employment during the corrective period, the employee shall furnish the appointing authority with an employee's affidavit, on that form to be provided by the Department of Personnel stating the amounts and sources of all his income during the corrective period.

(3) The income, property or assets of the spouse of the employee shall not be considered in determining the amount of the employee's income to be setoff against the employee's gross pay.

Section 6. Deductions. The appointing authority shall make deductions for the following:

(a) Federal and state income taxes;

(b) Any applicable local payroll and occupational license taxes;

(c) Social Security taxes required by federal and state laws and the applicable regulations of the federal Internal Revenue Service, the Kentucky Revenue Cabinet, and Social Security Administration; and

(d) The amount required to reimburse the state unemployment fund for those unemployment compensation benefits received by the employee during the corrective period.

Section 7. Annual and Sick Leave. (1) The appointing authority shall calculate the number of days of annual and sick leave that the employee would have accumulated during the corrective period.

(2) When an employee has been ordered reinstated to his former position or a like position, all annual leave and sick leave and compensatory time that the employee accrued and for which he was not paid at the time of dismissal, shall be reinstated.

(3) An employee who does not desire to be reinstated, but who seeks only compensation, may be paid for annual leave time which would have accrued to him during the corrective period based on the Department of Personnel administrative regulations governing the accumulation of annual leave time in effect during the corrective period. (15 Ky.R. 1986; Am. 2149; eff. 3-8-89.)
(copy of 200 KAR 12:030 from the online Kentucky Administrative Regulations at www.lrc.ky.gov)